

BRB No. 92-0107

DAVID M. ANDERSON

Claimant-Respondent

V.

INGALLS SHIPBUILDING,
INCORPORATED

Self-Insured Employer-Petitioner

DATE ISSUED: _____

DECISION and ORDER

Appeal of the Supplemental Decision and Order Awarding Attorney Fees of A.A. Simpson, Jr., Administrative Law Judge, United States Department of Labor.

Rebecca J. Ainsworth (Maples & Lomax), Pascagoula, Mississippi, for claimant.

Paul M. Franke, Jr., and Traci M. Castille (Franke, Rainey & Salloum), Gulfport, Mississippi, for self-insured employer.

Before: HALL, Chief Administrative Appeals Judge, BROWN and DOLDER,
Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Supplemental Decision and Order Awarding Attorney Fees (88-LHC-3566) of Administrative Law Judge A.A. Simpson, Jr., rendered on a claim filed pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.* (the Act). The amount of an attorney's fee award is discretionary and will not be set aside unless shown by the challenging party to be arbitrary, capricious, an abuse of discretion or not in accordance with law. *Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 272 (1980).

Claimant, who was exposed to loud noise while working in employer's shipyard, filed a claim for hearing loss benefits under the Act in November 1986, alleging that he suffered a 46.5 percent binaural impairment. Employer controverted the claim. The case was subsequently referred to the Office of Administrative Law Judges for a formal hearing which was held on November 16, 1989. Claimant and employer stipulated that the unresolved issues were causation, the nature and extent of claimant's disability, responsible employer, and employer's liability for a Section 14(e) penalty, medical benefits, and an attorney's fee. In his Decision and Order, the administrative law judge awarded claimant benefits for a 22.5 percent binaural impairment payable by employer.

pursuant to Section 8(c)(13) of the Act, 33 U.S.C. §908(c)(13)(1988).¹ Employer also was held liable for a Section 14(e) penalty, medical benefits and interest. Lastly, the administrative law judge determined that employer is liable for an attorney's fee.

Subsequently, claimant's counsel filed a petition for an attorney's fee of \$3,914.50, representing 31 hours of services at a rate of \$125 per hour, plus \$39.50 in expenses. Employer filed objections to the fee petition. In a Supplemental Decision and Order, the administrative law judge considered employer's specific objections and reduced the hourly rate for claimant's senior counsel to \$100 and the hourly rate sought by claimant's associate counsel for services performed in 1989 and 1990 to \$80 and \$85 respectively. Next, the administrative law judge disallowed 15.75 of the 31 hours claimed. Accordingly, he awarded claimant's counsel a fee of \$1,285.60, representing 2.875 hours of services rendered at \$100 per hour, 1.625 hours of services rendered at \$85 per hour, and, 10.75 hours of services rendered at \$80 per hour, plus the \$39.50 in requested expenses.

On appeal, employer challenges the fee awarded by the administrative law judge, incorporating the objections it made below into its brief on appeal. Claimant responds, urging affirmance.

¹The administrative law judge credited the most recent audiogram of record to reach his conclusion that claimant has a 22.5 percent binaural impairment. Decision and Order at 2; CX 2; EX 4.

Employer initially contends that the lack of complexity of the instant case mandates a reduction in the amount of the attorney's fee awarded by the administrative law judge.² We disagree. An attorney's fee must be awarded in accordance with Section 28 of the Act, 33 U.S.C. §928, and the applicable regulation, Section 702.132, 20 C.F.R. §702.132, which provides that the award of any attorney's fee shall be reasonably commensurate with the necessary work done, the complexity of the legal issues involved and the amount of benefits awarded. *See generally Parrott v. Seattle Joint Port Labor Relations Committee of the Pacific Maritime Ass'n*, 22 BRBS 434 (1989). Thus, the complexity of the legal issues is but one factor to be considered when awarding an attorney's fee. *See* 20 C.F.R. §702.132; *Thompson v. Lockheed Shipbuilding & Construction Co.*, 21 BRBS 94 (1988). In the instant case, the administrative law judge considered this specific objection in reducing counsel's requested hourly rate. We therefore reject employer's contention that the awarded fee must be further reduced on this basis.

Employer next asserts that the hourly rates awarded by the administrative law judge to claimant's counsel are excessive. In support of its contention, employer suggests that a rate of \$75 to \$80 per hour would be more reasonable. We disagree. The administrative law judge determined that the hourly rate of \$125 sought by claimant's counsel was excessive, and awarded claimant's senior counsel an hourly rate of \$100, and claimant's associate counsel \$80 per hour for services performed in 1989 and \$85 per hour for services performed in 1990. As employer's mere assertion that the awarded rates do not conform to the reasonable and customary charge in the area where this claim arose is insufficient to meet its burden of proving that the rates are excessive, we affirm the rates awarded by the administrative law judge to claimant's counsel. *See Maddon v. Western Asbestos Co.*, 23 BRBS 55 (1990).

Employer also objects to counsel's minimum quarter-hour billing method. Although counsel submitted a fee petition using this method of billing, the administrative law judge's decision to reduce entries for time spent reviewing routine correspondence on nine different dates from one-quarter to one-eighth of an hour is in compliance with the unpublished fee order of the United States Court of Appeals for the Fifth Circuit in *Ingalls Shipbuilding, Inc. v. Director, OWCP [Fairley]*, No. 89-4459 (5th Cir. July 25, 1990).³ *See also Ingalls Shipbuilding, Inc. v. Director, OWCP [Biggs]*, No. 94-40066 (5th Cir. Jan. 12, 1995) (unpublished). We therefore decline to further reduce these entries on this basis. *See Ross v. Ingalls Shipbuilding, Inc.*, 29 BRBS 42 (1995).

²Employer additionally contends that counsel's fee should be reduced since the case was "a routine and uncontested hearing loss claim." We note that, contrary to this assertion, our review of the record reveals that before the administrative law judge employer controverted causation, the extent of claimant's disability, medical benefits, and its liability for a Section 14(e) penalty.

³The administrative law judge allowed one-quarter hour for writing letters, and the Fifth Circuit has stated that this is a reasonable amount of time for a one-page letter. *See Fairley*, slip op. at 2. He also properly allowed the .5 hours requested on May 12, 1989 for receipt and review of employer's responses to claimant's requests for admissions as this was a multi-page document which would require comparison with claimant's multi-page request to have any meaning.

Finally, employer challenges the number of hours requested by counsel and approved by the administrative law judge. In this regard, employer contends that the time spent in certain discovery-related activity, in trial preparation, and in reviewing and preparing various legal documents was either unnecessary or excessive, or clerical in nature. After evaluating claimant's fee request in light of the regulatory criteria of 20 C.F.R. §702.132 and employer's specific objections, the administrative law judge disallowed 15.75 hours sought by counsel, a reduction of approximately 50 percent, and found the remaining itemized services to be reasonable and necessary. We decline to further reduce or disallow the hours approved by administrative law judge, as employer's assertions are insufficient to meet its burden of proving that the administrative law judge abused his discretion in this regard. *See Maddon*, 23 BRBS at 55; *Cabral v. General Dynamics Corp.*, 13 BRBS 97 (1981). We note, however, that the amount of requested time and the hourly rates approved by the administrative law judge result in a total fee of \$1,285.60 as the administrative law judge stated in the body of his decision; the administrative law judge's order, however, directs employer to pay a fee of \$1,445.50. We therefore modify the administrative law judge's attorney's fee order to reflect employer's liability for a fee of \$1,285.60, representing 2.875 hours of approved services rendered at an hourly rate of \$100, 1.625 hours of approved services rendered at an hourly rate of \$85, and 10.75 hours of approved services rendered at an hourly rate of \$80.

Accordingly, the administrative law judge's Supplemental Decision and Order Awarding Attorney Fees is modified to reflect employer's liability for an attorney's fee of \$1,285.60; in all other respects the administrative law judge's fee award is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

NANCY S. DOLDER

Administrative Appeals Judge